

REMARKS

1. The Examiner has disapproved the new drawings filed on August 25, 2004 for failure to comply with 37 CFR §1.121(d). According to the Examiner, Figures 2-5 differ substantially from the drawings originally filed. These differences were not addressed as required by the noted rule.

The new drawings filed on August 25, 2004 were filed in response to a Notice to File Corrected Application Papers mailed on August 9, 2004. The drawings originally filed with the application had a line quality that was too light to be reproduced or text that was illegible. All of the drawings as filed had certain reference numerals placed on the drawings by hand. Although the Notice to File Corrected Application Papers of August 9, 2004 expressly applied only to Figure 3, Applicant submitted more formalized replacement drawings for each of the Figures.

It was not Applicant's intention to amend or change the drawings in any material way when responding to the Notice to File Corrected Application Papers. Admittedly, Applicant rotated the line drawing of a baby, shown in Figure 2, from a prone position to a more suitable upright position. However, the baby of Figure 2 is not a numbered element of the Figure, nor is the baby claimed as part of the invention. The baby was moved to an upright position merely to correctly show the environment in which Applicant's invention is used.

Other than the position of the non-material baby in Figure 2, Applicant is unaware of any material change between the drawings as filed and those submitted in response to the Notice. Applicant apologizes for not describing the reason the non-material baby's position was changed at the time of the response to the Notice. Applicant respectfully requests that the difference described above be noted, and that the Examiner's disapproval of the drawings filed on August 25, 2004 be withdrawn.

2. The Examiner objects to the drawings pursuant to 37 CFR §1.83(a) because no magnet as set forth in claim 10 is shown. In response to this objection, Applicant cancels claim 10.

3. The Examiner objects to the specification for failing to provide proper antecedent basis for the claimed subject matter. In particular, the Examiner finds no proper antecedent basis for the attachment means and connecting means of claim 1, and the removable attachment means and connecting means of claim 19. In response, Applicant points out the following: a) the attachment means and connecting means are described in the summary of the invention at paragraphs [7], [8], and [10]. In addition, the attachment means and connecting means are described in the abstract. Furthermore, throughout the detailed description, element 3, an attachment structure, has been amended to read element 3, an attachment means. Support for this amendment to the specification is contained in the paragraphs cited above, the claims as filed, as well as the figures. In addition, paragraph [17] of the specification has been amended to read, "a connecting means which can be a strap 4." The language of claim 19 has been amended to recite connecting means. Support for the foregoing amendment to the specification can be found in the paragraphs cited above, the claims as originally filed, and the figures. Based upon the foregoing arguments and amendment to the specification, Applicant respectfully requests that the objection to the specification for failing to provide proper antecedent basis be withdrawn.

4. Claim 10 stands rejected under 35 USC §112, first paragraph, as containing subject matter which is not described in the specification in such a way as to enable one skilled in the art to which it pertains to make and/or use the invention. In particular, the Examiner notes that the claim recites a magnet. According to the Examiner, implementation of this subject matter is neither taught by the instant disclosure nor evident. Applicant respectfully disagrees. According to paragraph [17] of the detailed description, "the flexible sheet 2 is secured for use to the bottom of a sink, bathtub or other vessel by an attachment means 3. In Fig. 1 the attachment means 3 is depicted as several suction cups, but other types of attachment structures such as plastic coated magnets...could be utilized as well." The clear teaching of the foregoing portion of the specification is that a plastic coated magnet can be substituted for the suction cup of Figure 1. Applicant, however, has elected to cancel claim 10 at this time.

5. Claim 19 stands rejected pursuant to 35 USC §112, first paragraph, because the specification is argued to be not enabling for a flexible sheet attached by attachment means only. Claims 19 and 20 are cancelled by the foregoing amendment.

6. Claims 1-5, 9, and 10 stand rejected under 35 USC §102(b) as being anticipated by Stevens. Claims 19 and 20 have been cancelled by means of the foregoing amendment. The remaining claims each depend from claim 1, which recites two distinct structures for attachment of the flexible sheet to the bottom surface of a bathing vessel: an attachment means and a connecting means. The connecting means removably connects the attachment means to the flexible sheet.

The attachment means can be several suction cups, plastic coated magnets, adhesive pads, padded weights, Velcro™, or clips (detailed description, paragraph 17). The connecting means can be a strap which is formed into a loop.

The removable connection of claim 1 is a critical element which distinguishes Applicant's invention from Stevens. The removable connection allows the attachment structures to be easily removed from the flexible sheet so that the flexible sheet can be hand laundered or washed in a typical household washing machine without damaging or degrading the attachment means (detailed description, paragraph 20). On the contrary, the suction cup fasteners 54 of Stevens are permanently attached to the fabric mat of Stevens. In particular, column 4, line 35 states, "For example, post 75 may be rigidly secured to a backing element or flange 72 by heat fusion or ultrasonic welding. Additionally, a grommet or other reinforcing device, not illustrated, may be disposed about the perforation 71, as will readily occur to those skilled in the cloth arts." Thus, the suction cups of Stevens are specifically described as being permanently attached to the Stevens flexible sheet.

Similarly, the alternative attachment means of Stevens, a Velcro™ attachment patch, is shown in Figure 5 as being permanently sewn to the flexible sheet. See also column 4, line 56, where it is stated, "A hook plate 80 is sewn onto fabric mat 52." Thus, Stevens does not teach "the connecting means removably connecting the attachment means to the flexible sheet" element of Applicant's claim 1. Accordingly,

Applicant respectfully requests that the Examiner's rejection under 35 USC §102(b) of claims 1-5, 9, and 10 be withdrawn.

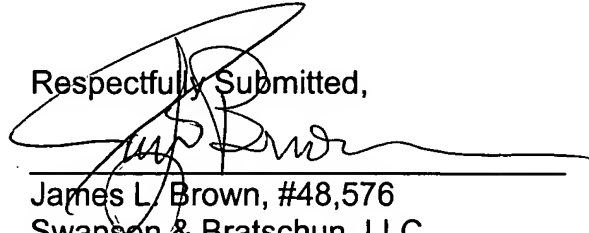
7. The Examiner also rejects claims 1-5, 9-11, 19, and 20 under 35 USC §103(a) as being unpatentably obvious over Stevens and Kiester. Kiester is cited as teaching the connecting means of Applicant's invention. The Examiner further argues that it would have been obvious to one of ordinary skill in the connecting means arts to associate a strap with the Stevens bathing apparatus in order to facilitate attachment.

There is no motivation for providing a removable connecting means to be found in either the Stevens or Kiester specifications. As discussed above, Stevens teaches only a permanently attached connecting means. Kiester arguably shows a removable connecting means but, being a design patent, provides no motivation to combine a removable connecting means with Stevens. Close review of Figure 5 of Kiester reveals two snaps, presumably used to adjust the reach of the Kiester sling. Thus, no motivation to combine the references can be drawn from this prior art. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ 2d 1430 (Fed. Cir. 1990); see also MPEP 2143.01.

In addition, the teaching of Stevens is limited to devices which are affixed to or draped over the side or lip of a bathing vessel. It appears that Kiester teaches a sling. Thus, both of these devices are designed to be used above the water level present in a tub during a bath. Claim 1 has been amended to recite that Applicant's apparatus is positioned in contact with the bottom surface of the bathing vessel. To establish *prima facie* obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art (see MPEP 2143.03). Accordingly, based upon the foregoing arguments, Applicant respectfully requests that the Examiner's rejection of claims 1-5 and 9-11 under 35 USC §103(a) be withdrawn.

No fee is believed to be due in this instance. The undersigned hereby authorizes the charge of any deficiency of fees submitted herewith, or the credit of any overpayment, to deposit account number 19-5117.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'J. L. Brown', is written over a horizontal line.

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